

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

)	
In re:)	
)	
NICHOLAS J. FIORILLO,)	Case No.: 10-44179-MSH
)	Chapter 7
Debtor.)	
)	

DEBTOR'S *EMERGENCY* MOTION FOR LIMITED STAY OF PROCEEDINGS PENDING
APPEAL

Now comes the Debtor, Nicholas J. Fiorillo, by counsel, and respectfully requests that this Honorable Court, pursuant to F.R.B.P. 8005, Order a limited stay of proceedings in the above captioned bankruptcy. In support thereof, the Debtor states the following:

1. The Debtor filed a *pro se* chapter 11 bankruptcy on August 23, 2010.
2. The Debtor was converted to a chapter 7 bankruptcy on October 7, 2010.
3. The undersigned counsel entered his appearance for the Debtor on October 22, 2010.
4. The Debtor filed an Emergency Motion to Dismiss his bankruptcy on October 27, 2010. The basis of such Motion was that the Debtor had not fulfilled the statutory requirements of 11 U.S.C. § 109(h). Specifically, (1) the Debtor had not taken an approved credit counseling course within the 180 days prior to the bankruptcy filing and (2) that no valid exigent circumstances existed which would allow for a waiver of that pre-filing requirement.
5. This Honorable Court denied the Emergency Motion to Dismiss on October 28, 2010.
6. The Debtor filed a Notice of Appeal of that denial on October 28, 2010 and elected to have the Appeal heard in the District Court.
7. The Honorable Douglas P. Woodlock was appointed to hear such Appeal. The Appellant's Brief is due no later than January 18, 2011 and the Appellee's Brief is due no later than February 1,

2011.

8. The issue on Appeal appears to be one of first impression in the First Circuit and the likelihood of success is significant.
9. Until recently, the only activity in the above captioned case that has occurred involved the exchange of information between the Debtor and Chapter 7 Trustee and U.S. Trustee's Office regarding assets, liabilities and ongoing revenues from real estate. The Debtor did not ask for a Stay of further activity in the above captioned bankruptcy case prior to the filing of this Motion because there was no danger of irreparable harm to the Debtor by the exchange of such information nor the requirement to expend large sums to defend such activity.
10. On January 3, 2011 the creditors Oasis, Inc., John Sousa and John Fisher filed Adversary Proceeding No. 11-04001 seeking to deny the Debtor a discharge.
11. The Debtor's representation agreement with the undersigned counsel specifically excludes representation in Adversary Proceedings. Therefore, it appears that the Debtor, at this juncture, may have to respond *pro se* to such complaint. The dischargeability complaint is complex and the harm to the Debtor is grave if not responded to properly.
12. Additionally, on January 14, 2011 the chapter 7 Trustee filed a Motion to have the Debtor file a credit counseling certificate purportedly evidencing a credit counseling class taken *after* the Debtor filed his *pro se* bankruptcy petition. The reasoning behind this Motion by the Chapter 7 Trustee is not clear and the timing is questionable as the Record regarding the credit counseling course is already closed on the Appeal.
13. The Debtor is *not opposed* to answering further questions and exchanging documents with the Chapter 7 Trustee and the U.S. Trustee's office. In addition, the Debtor is *not opposed* to continuing to forward rental payments from the rental property located at Gates Street in Worcester to the Chapter 7 Trustee, as long as the Trustee uses such funds to maintain the property and pay management fees for such maintenance while holding the rest in escrow.

14. No party will be aggrieved by the allowance of this Limited Motion to Stay because Judge Woodlock's Appeal scheduling Order indicates that the Appeal will be resolved at the District Court level in a matter of weeks.
15. This Motion is filed on an *Emergency* basis because the Debtor needs to respond to the Oasis, Inc. Adversary Proceeding under a tight deadline. In addition, the Chapter 7 Trustee asks for the specified credit counseling certificate to be filed in "24 hours".
16. F.R.B.P. 8005 states: "Notwithstanding [Rule 7062](#) but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the [Code](#) or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest."

WHEREFORE, the Debtor respectfully requests that this Honorable Court Order a Limited Stay of Further Proceedings in the above captioned bankruptcy such that all actions are stayed until Judge Woodlock makes his appellate ruling. The only actions not stayed would be (1) ones where the Debtor can continue to communicate and answer questions from the U.S. Trustee and Chapter 7 Trustee and (2) the Debtor would continue to turn over rents from the Gates Street property to the Chapter 7 Trustee as long as the Trustee uses such funds to maintain the property, including management fees, and holds the rest in escrow.

Respectfully submitted,
Nicholas J. Fiorillo,
by his counsel,

/s/ James P. Ehrhard
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Dated: January 16, 2011

CERTIFICATE OF SERVICE

I, James P. Ehrhard, do hereby certify that I have this 16th day of January, 2011 served a copy of the above "Debtor's Emergency Motion for Limited Stay of Proceedings Pending Appeal" to those parties listed below by first class U.S. Mail if not served by electronic mail via ECF:

Office of the U.S. Trustee via ECF

Chapter 7 Trustee Jonathan Goldsmith via ECF

Alex Mattera, Esq. (for Gates Street Lending) via ECF

Evans J. Carter, Esq. (for Santo Acuri) via ECF

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/s/ James P. Ehrhard
James P. Ehrhard